

COURTROOM POLICIES AND PROCEDURES
HON. ERITHE A. SMITH
COURTROOM 1645

Effective November 1, 1996

The following is a summary of general courtroom policies and procedures which will be observed by Judge Smith. Such policies and procedures are intended as a supplement to and not a replacement for the provisions of the Bankruptcy Code ("Code"), the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), the Federal Rules of Civil Procedure ("Federal Rules") and the Local Rules for the Central District of California ("Local Rules")¹, all of which are applicable to practice before this Court. The following summary is not intended to cover all circumstances of matters before the Court and certain policies and procedures may be adjusted in certain cases where appropriate.

I. MOTIONS IN GENERAL

A. Evidentiary Requirements:

All motions and applications must be supported by declaration(s). Pleadings submitted without supporting declarations will likely be denied, even if no opposition is filed. In matters where an appraisal is submitted in support of a pleading, e.g., relief from stay matters, the appraisal must be authenticated by a declaration of the appraiser or the appraisal will not be considered.

¹ Judge Smith's policy regarding the procedure for obtaining a hearing date for an emergency motion differs slightly from Local Rule 9075-1.

B. Motions without Hearings:

With respect to all motions filed pursuant to Local Rule 9013-1(7) or otherwise not requiring a hearing absent an objection and request for a hearing, the moving party must file a declaration stating that no opposition to the motion has been served within the objection period. The order will not be signed absent such a declaration.

II. RELIEF FROM STAY MOTIONS

A. Evidentiary Requirements:

Moving parties asserting a security interest in property of the debtor must attach evidence of such recorded security interest to the motion. In cases where the original note/deed of trust has been assigned, copies of all recorded assignments must be attached to the motion. Stated otherwise, no orders granting relief from the stay will be signed absent properly authenticated documentary evidence of the movant's beneficial interest in the debtor's property.

With respect to unlawful detainer motions, such motions must be supported by a declaration of the owner or property manager and a properly authenticated copy of the unlawful detainer complaint (with state court's stamp) and/or the state court judgment. Failure to provide such evidence may result in denial of the motion even if the debtor fails to respond or appear.

B. Extraordinary Relief:

1. Prospective Relief as to Debtor (i.e., relief from the stay effective in any subsequent bankruptcy filed by the debtor within a 180-day period): Granted only upon good cause shown, e.g., multiple filings.

2. Waiver of Cal. Civ. Proc. Sec. 2924(g): Granted only upon showing of bad faith or other extraordinary circumstance.

3. "In Rem" Relief (i.e., relief from the stay effective in any subsequent bankruptcies -- even non-debtors -- involving the subject property): Granted only in the most egregious bad faith cases, usually involving multiple transfers of property.

III. ADVERSARY PROCEEDINGS

A. Motions for Entry of Default Judgment:

A prove-up hearing is required. The motion must be served upon the defendant in accordance with Local Rule 9013-1 and must be supported by declaration and appropriate documentary evidence, e.g., invoices, statements, contracts, etc. Absent exigent circumstances (as shown by declaration of the moving party's attorney), a motion for entry of default judgment will not be continued more than once.

B. Joint Status Report/Joint Pretrial Order:

Joint Status Reports and Joint Pretrial Orders must be timely filed in accordance with Local Rule 7016-1. Parties failing to do so will be subject to a minimum sanction of \$100.00 or other sanctions as allowed under L.R. 7016-1. Failure to appear for a status conference or pretrial conference may result in a minimum sanction of \$150.00 or other sanctions as allowed under L.R. 7016-1. The attorney responsible for litigating the trial **MUST** appear at the pretrial conference. Failure to appear may result in the imposition of sanctions.

IV. EX PARTE MATTERS/ MOTIONS FOR ORDER SHORTENING TIME

As a general rule, all emergency motions and motions for order shortening time (except motions for relief from stay in residential unlawful detainer cases) must be filed with the Court before a hearing will be scheduled. After receipt of the moving papers, the Judge's law clerk will contact the moving party's counsel and advise him/her as to whether the matter will be heard on an expedited basis and, if applicable, the date/time of the hearing and required notice of the hearing. With respect to motions for order shortening time, the Court will, in most instances, issue its own order. If the emergency motion is denied, the moving party will be contacted by the Judge's courtroom deputy to schedule a hearing on the Court's regular calendar.

V. SELF-CALENDARING

Judge Smith is currently only utilizing the self-scheduling system for Relief From Stay Motions. Accordingly, all other hearing dates (except as noted herein above) must be obtained by calling the Judge's Courtroom Deputy, Sandra Bryant, directly at (213) 894-7341.

VI. HEARINGS BY TELEPHONIC CONFERENCE CALL

Hearings by conference call are currently allowed on a case-by-case basis only. Requests for telephonic appearance must be made to the Judge's judicial assistant at least two court days prior to the scheduled hearing.

VII. PROFESSIONAL EMPLOYMENT APPLICATIONS

In order to expedite the processing of professional employment orders, applicants should file a declaration attesting that no opposition to the application was received during the response period if in fact no such

opposition was received. Otherwise, the execution of the employment order will be delayed pending the Court's determination that no opposition was filed.

VIII. SERVICE OF PLEADINGS

Failure to properly serve pleadings in accordance with applicable rules will result in either a continuance of the hearing or denial of the relief requested. Under Bankruptcy Rule 9014, certain contested matters must be served in accordance with Bankruptcy Rule 7004. Rule 7004(b)(3) requires that service upon a corporation or partnership be made to the attention of an officer, managing or general agent or any other person authorized by appointment or by law to receive service. Rule 7004 has been amended by the Bankruptcy Reform Act of 1994, H. R. 5116, 103rd Congress, Second Session, 140 Cong. Rec. H10752 (1994) to require (with certain exceptions) that service upon any insured depository institution in a contested or adversary matter be made by certified mail addressed to an officer of the institution. Rule 7004 is strictly enforced by Judge Smith.

IX. COURTROOM ETIQUETTE

Unless court is in session, please check in with the Court Recorder prior to your scheduled hearing. Do not approach or speak with the Court Recorder while a hearing is in progress except to leave a proposed order in the order box. When leaving orders for the court's signature, write the calendar number of the case in the upper left-hand corner of the order.

The use of electronic devices (e.g., pagers, cellular phones, and other devices subject to ring or buzz) in the courtroom are **strictly** prohibited.

“Second Call” - If you have a conflict which needs to be placed on "second call", please contact the Judge's judicial assistant at (213) 894-4082. If you are not present when your matter is called and no communication has been received, your motion may be denied for failure to appear.

X. TENTATIVE RULINGS:

Judge Smith generally issues tentative rulings regarding law and motion matters one-half hour prior to the beginning of the morning calendar. Tentative rulings are posted on the bulletin board outside the courtroom, at the attorney tables in the courtroom, and on webPACER. Tentative rulings may not be rendered on every matter. If a tentative ruling has been issued and the moving party wishes to accept the tentative ruling, and 1) no opposition has been filed and, 2) the tentative ruling does not specifically require an appearance, the moving party need not check in or make an appearance. Proposed orders may be left in the order at the Court Recorder's desk.

If the moving party chooses to rest on the tentative ruling and an opposing party appears to argue against the ruling, the Court will determine if a continuance of the hearing is warranted and will notify the moving party of the continued hearing date. The court will not reverse a tentative ruling without a continued hearing.

COURT STAFF:

Joshua Mester, Law Clerk:	(213) 894-1804
Rosa Green, Judicial Assistant:	(213) 894-4082
Sandra Bryant, Courtroom Deputy:	(213) 894-7341
Pat Pennington, Relief Courtroom Deputy:	(213) 894-6498
Laura Quintanar, Court Recorder:	(213) 894-3684